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# HOUSE BILL No. 1037

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 24-5-13.8; IC 26-1-2-316.

**Synopsis:** Right to rescind purchase of used car. Entitles the buyer of a used motor vehicle from a dealer to rescind the purchase of the vehicle if the vehicle is subject to a nonconformity (a defect that substantially impairs the use, market value, or safety of the vehicle) and the buyer returns the vehicle to the dealer's place of business before the end of the fifth business day following the purchase, notifies the dealer of the existence of the nonconformity, and informs the dealer of the buyer's desire to rescind the purchase. Provides that a buyer may rescind the purchase of a used motor vehicle that is subject to a nonconformity even though the dealer, before selling the used motor vehicle, indicated in writing that the vehicle was being sold "as is" or "with all faults". Requires the dealer to make a refund to a buyer who rescinds the purchase of a used motor vehicle. Authorizes a buyer who rescinds the purchase of a used motor vehicle to bring a civil action to enforce the rescission and obtain a refund.

**Effective:** July 1, 2001.

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### Smith V

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January 8, 2001, read first time and referred to Committee on Judiciary.

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Introduced

First Regular Session 112th General Assembly (2001)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2000 General Assembly.

## HOUSE BILL No. 1037

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

*Be it enacted by the General Assembly of the State of Indiana:*

- 1 SECTION 1. IC 24-5-13.8 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2001]:  
4 **Chapter 13.8. Right to Rescind Purchase of Used Motor Vehicle**  
5 **Sec. 1. As used in this chapter, "business day" means a day**  
6 **other than a Sunday or a legal holiday set forth in IC 1-1-9-1.**  
7 **Sec. 2. As used in this chapter, "buyer" means any person who,**  
8 **for purposes other than resale or sublease, enters into a contract**  
9 **within Indiana for the purchase of a used motor vehicle from a**  
10 **dealer.**  
11 **Sec. 3. As used in this chapter, "dealer" means a person that:**  
12 **(1) is engaged in the business of selling or leasing used motor**  
13 **vehicles; and**  
14 **(2) sells, leases, or advertises the sale or lease of more than**  
15 **four (4) used motor vehicles within a twelve (12) month**  
16 **period.**  
17 **Sec. 4. (a) As used in this chapter, "motor vehicle" means a**



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self-propelled vehicle that:

- (1) has a declared gross vehicle weight of less than ten thousand (10,000) pounds;
- (2) is intended primarily for use and operation on public highways;
- (3) is sold to a buyer in Indiana; and
- (4) is registered in Indiana, unless the buyer is not an Indiana resident (as defined in IC 9-13-2-78).

(b) The term does not include the following:

- (1) Conversion vans.
- (2) Motor homes.
- (3) Farm tractors and other machines used in the actual production, harvesting, and care of farm products.
- (4) Road building equipment.
- (5) Truck tractors.
- (6) Road tractors.
- (7) Motorcycles.
- (8) Mopeds.
- (9) Snowmobiles.
- (10) Vehicles designed primarily for offroad use.

Sec. 5. As used in this chapter, "nonconformity" means a specific or generic defect or condition or a concurrent combination of defects or conditions that:

- (1) substantially impair the use, market value, or safety of a used motor vehicle; or
- (2) render the used motor vehicle nonconforming to the terms of a manufacturer's warranty that applies to the used motor vehicle.

Sec. 6. As used in this chapter, "used motor vehicle" means a motor vehicle that has been:

- (1) titled under IC 9-17 or the motor vehicle title law of another state; and
- (2) transferred by a manufacturer, distributor, or dealer to an ultimate purchaser.

Sec. 7. (a) This section applies regardless of whether a dealer, before selling a used motor vehicle to a buyer, indicates in a writing attached to the motor vehicle or in a separate writing that:

- (1) the used motor vehicle is being sold "as is" or "with all faults"; or
- (2) all warranties applying to the used motor vehicle are negated or excluded.

(b) Except as provided in section 8 of this chapter, if a buyer:



(1) purchases a used motor vehicle that is subject to a nonconformity; and

(2) before the end of the fifth business day following the day on which the used motor vehicle was purchased:

(A) returns the used motor vehicle to the dealer's place of business;

(B) notifies the dealer of the existence of the nonconformity; and

(C) informs the dealer that the buyer wishes to rescind the purchase of the used motor vehicle;

the buyer's purchase of the used motor vehicle is rescinded and the dealer that sold the used motor vehicle shall make a refund to the buyer under section 9 of this chapter.

Sec. 8. Section 7 of this chapter does not authorize a buyer to rescind the purchase of a used motor vehicle on the grounds that the used motor vehicle is subject to a particular nonconformity if the dealer, in a writing attached to the used motor vehicle, plainly disclosed the existence of the nonconformity to the buyer before the buyer purchased the used motor vehicle.

Sec. 9. (a) The amount of a refund required by this chapter equals the full contract price of the used motor vehicle, including all credits and allowances for any trade-in vehicle, less the allowance for use determined under subsection (b).

(b) To determine allowance for use, multiply:

(1) the total contract price for the purchase of the used motor vehicle; by

(2) a fraction having as its denominator one hundred thousand (100,000) and having as its numerator the number of miles that the used motor vehicle traveled after the buyer bought it and before the buyer returned it to the dealer.

(c) A refund made under this chapter must also include reimbursement for the following incidental costs:

(1) Sales tax applying to the purchase of the used motor vehicle.

(2) The unexpended portion of the registration fee and excise tax that has been prepaid for any calendar year.

(3) Finance charges actually expended.

(d) A refund under this chapter is made to the buyer and lienholder, if any, as their respective interests appear on the records of ownership.

Sec. 10. This chapter does not limit the rights or remedies that are otherwise available to a buyer under any other applicable law.



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1       **Sec. 11. (a) A buyer may bring a civil action to enforce this**  
 2       **chapter in any circuit or superior court.**

3       **(b) A buyer may not initiate an action under this chapter more**  
 4       **than two (2) years after the date on which the buyer returned the**  
 5       **used motor vehicle to the dealer's place of business and informed**  
 6       **the dealer of the buyer's rescission of the purchase of the used**  
 7       **motor vehicle.**

8       **(c) A buyer who prevails in an action under this chapter is**  
 9       **entitled to recover as part of the judgment the aggregate amount**  
 10       **of costs and expenses, including attorney's fees based on actual**  
 11       **time expended by the attorney, determined by the court to have**  
 12       **been reasonably incurred by the buyer for or in connection with**  
 13       **the initiation and prosecution of the action.**

14       SECTION 2. IC 26-1-2-316 IS AMENDED TO READ AS  
 15       FOLLOWS [EFFECTIVE JULY 1, 2001]: Sec. 316. (1) Words or  
 16       conduct relevant to the creation of an express warranty and words or  
 17       conduct tending to negate or limit warranty shall be construed  
 18       wherever reasonable as consistent with each other; but subject to the  
 19       provisions of IC 26-1-2-202 on parol or extrinsic evidence, negation or  
 20       limitation is inoperative to the extent that such construction is  
 21       unreasonable.

22       (2) Subject to subsection (3), to exclude or modify the implied  
 23       warranty of merchantability or any part of it the language must mention  
 24       merchantability and in case of a writing must be conspicuous, and to  
 25       exclude or modify any implied warranty of fitness the exclusion must  
 26       be by a writing and conspicuous. Language to exclude all implied  
 27       warranties of fitness is sufficient if it states, for example, that "There  
 28       are no warranties which extend beyond the description on the face  
 29       hereof."

30       (3) Notwithstanding subsection (2):

31       (a) unless the circumstances indicate otherwise, all implied  
 32       warranties are excluded by expressions like "as is", "with all  
 33       faults", or other language which in common understanding calls  
 34       the buyer's attention to the exclusion of warranties and makes  
 35       plain that there is no implied warranty; and

36       (b) when the buyer before entering into the contract has examined  
 37       the goods or the sample or model as fully as he desired or has  
 38       refused to examine the goods there is no implied warranty with  
 39       regard to defects which an examination ought in the  
 40       circumstances to have revealed to him; and

41       (c) an implied warranty can also be excluded or modified by  
 42       course of dealing or course of performance or usage of trade; and

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(d) with respect to the sale of cattle, hogs, or sheep, there is no implied warranty that the cattle, hogs, or sheep are free from disease, if the seller shows that all state and federal regulations concerning animal health have been complied with; and

(e) with respect to a sale of audio or visual entertainment products, as defined by IC 26-2-6-1, made as a result of a solicitation through a mail order catalog, it is sufficient to exclude all implied warranties in connection with the sale of any product in the catalog, if the contract is in writing and the language in the contract conspicuously states that:

(i) the product is sold "as is" or "with all faults"; and

(ii) the entire risk as to the quality and performance of the product is with the buyer.

(4) Remedies for breach of warranty can be limited in accordance with the provisions of IC 26-1-2-718 and IC 26-1-2-719 on liquidation or limitation of damages and on contractual modification of remedy.

**(5) The exclusion of implied warranties through the expression "as is", "with all faults", or other similar language under this section does not affect the right of the buyer of a used motor vehicle to rescind the purchase of the used motor vehicle under IC 24-5-13.8.**

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